IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 34 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHANKERLAL GAFURBHAI PATEL

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. WEALTH TAX REFERENCE No. 34 of 1991
MR JP SHAH for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE K.M.MEHTA

Date of decision: 21/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the assessee, the following question of law, arising out of the order passed by the Income Tax Appellate Tribunal, Ahmedabad Bench 'C', has been referred to this court for its opinion under the provisions of sec. 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to as 'the Act') :

"Whether, on the facts and in the circumstances of the case, the assessee was entitled to the exemption u/s 5(1)(xvia) in respect of the National Defence Gold Bonds, 1980?"

2. The facts giving rise to the reference, in a nutshell, are as under :

3. In 1965, a declaration was made by the Union of India to the effect that the country wanted to strengthen its defence forces against possible aggression by enemy countries and, therefore, the country needed arms and armaments and machines that would make arms and armaments so that the country can become self-sufficient in the matter of its defence. The country required machinery and raw material for the industries to support the people's efforts. The country required fertilizers and farm equipments to grow more food so as to see that dependence on foreign countries is reduced. For all these purposes, the country was not having sufficient gold and, therefore, an appeal was made to the citizens that idle gold, which the people of the country were having, should be handed over to the country so that the need for valuable gold to earn foreign exchange for the country can be satisfied.

4. Looking to the said need of the country, in 1965, the Union of India had issued the National Defence Gold Bonds, 1980 (for short "Gold Bond"). The said Gold Bonds were to be issued in exchange of gold, gold coins and gold ornaments by the Government. All the gold, which the Government was to receive from the citizens, was to be returned to them after 15 years. Thus, under the said scheme, a citizen had to give his gold, gold coins or gold ornaments to the country and in exchange thereof the citizen was to be issued the Gold Bond. The said scheme was open till 31.1.1966 i.e. till that date it was open to the citizen to give his gold, gold coins or gold ornaments to the country and in exchange thereof he was to get the Gold Bond. The said bonds were to be again exchanged for gold after 15 years. The date of maturity,

which was declared at the relevant time, was 27.10.1980. Thus, the Government had promised the citizens that in return of the Gold Bond the Union of India would return the gold so received from the citizens on 27.10.1980. It is also pertinent to note that there were certain characteristics of the said Gold Bond. Special incentives were given to the citizens so that they may surrender their idle gold to the country. The Government had declared that no questions would be asked to the citizen as to how he acquired the gold and no action was to be taken against him in pursuance of the Gold Control Act or any other regulations in respect of the gold given. The gold, which was to be given to the country, was to be sent to a mint and was to be refined to the tune of 23.88 ct. and the Government was to issue the Gold Bond stating the quantity of gold received by the Government.

5. It was also decided that a sum of Rs. 2/- per 10 gms. of refined gold would be paid to the bearer of the Gold Bond every year. Thus, return of Rs.2/- per 10 gms of gold was also assured to the bearer of the Gold Bond. In addition to the above attraction, it was also declared that the first subscriber of the Gold Bond would be exempted in respect of Gift Tax, Estate Duty and Wealth Tax. No gift tax was to be paid by the first subscriber in respect of gift of the Gold Bond upto 5000 gms. of gold in one year and the Gold Bond was also exempted from payment of estate duty on the occasion of death of the initial subscriber of the bond. The Ministry of Finance had issued a notification dated 19.10.1965 giving details with regard to the above Gold Bond. In clause (5) of the said notification it was also provided that the Gold Bond would be exempt from Wealth Tax and capital gains arising from its sale or transfer.

6. In pursuance of the notification referred to hereinabove and the policy laid down by the Union of India, clause (xvia) of sec. 5(1) of the Act provided for exemption to the Gold Bond as under :

"6 1/2% Gold Bonds, 1977, 7 per cent Gold bonds, 1980, and National Defence Gold Bonds, 1980"

7. The question, in the instant case, has arisen on account of the peculiar facts of the case. The assessee had subscribed to the Gold Bond. Even after the date of maturity of the Gold Bond, the assessee did not offer his Gold Bond to the Government of India for getting his gold back. In the circumstances, the question which arose was

whether the Gold Bonds were eligible for exemption under the provisions of sec. 5(1)(xvia) of the Act.

8. The assessee had claimed exemption u/s 5(1)(xvia) of the Act in respect of the Gold Bonds held by him for the A.Y. 1981-82 to 1983-84. The Wealth-tax Officer rejected the claim on the ground that the date of redemption had already been over, the Gold Bond retained was not eligible for the exemption. Being aggrieved by the order passed by the WTO, the assessee filed an appeal before the Appellate Authority. The Appellate Authority confirmed the order passed by the WTO observing that the assessee had deliberately continued to hold the Gold Bonds even after the date of maturity and thereby he had made an effort to get undue advantage of clause 5(1)(xvia) of the Act. The Appellate Authority referred to the law laid down by the Supreme Court of India in the case of McDowell & Co., 154 ITR 148, and held that the assessee was not eligible for the exemption.

9. Being aggrieved by the appellate order, the assessee approached the Tribunal by filing an appeal. The Tribunal also rejected the assessee's claim for exemption.

10. Different Tribunals have taken different views in the matter with regard to exemption of the Gold Bond and, therefore, at the instance of the assessee, a question has been referred to this court as to whether the Gold Bond would still be exempted from payment of tax under the Act after the date of maturity?

11. We have heard learned advocate Shri J.P. Shah appearing for the applicant-assessee and Sr. Standing Counsel Shri M.R. Bhatt for the respondent revenue.

12. Learned advocate Shri J.P. Shah appearing for the assessee has given details with regard to the circumstances in which the country required gold. He has put much stress on the patriotism and feelings of the assessee towards his country, which prompted him to offer his gold to the country so that it can be used for procuring more foreign exchange and thereby help the country in her progress as well as in her defence. According to the learned advocate, even after the date of maturity i.e. 27.10.1980 the Gold Bond did not lose its peculiar characteristics of the bond. According to him, the assessee had not exchanged the Gold Bond for gold. As the Gold Bond had not been exchanged for gold, it cannot be said that the assessee was in fact having the gold. According to the learned advocate, there cannot be

any deeming provision which would constrain the assessing authorities to presume that the assessee was having gold and not the bond. If, according to the provisions of sec. 5(1)(xvia) of the Act, the Gold Bond was exempted in respect of payment of wealth tax, then the authority had only to look at the fact whether the assessee was having the Gold Bond. If the answer was in the affirmative, that is, if it can be said that the assessee was having the Gold Bond, then the authority was bound to exempt the assessee's holding of the Gold Bond. According to him, the revenue authorities have substantially erred in considering the said Gold Bond as gold. The gold bond cannot be treated as gold for any purpose under the Act. It has been also submitted by him that the Union of India had issued several press notes and circulars so as to attract people for purchasing the Gold Bond. It has been submitted by him that one of the attractions, which was given by the Government of India in the press notes issued by it, was that the Gold Bonds were exempted from wealth tax. This being the position, and as the exemption was very much on the statute book, the assessee was right in presuming that he was entitled to the exemption if, even after the date of maturity, he did not get his Gold Bonds exchanged for gold.

13. It has been thus submitted by him that the Gold Bond retained its basic characteristic as gold bond till the same had been redeemed and, therefore, the petitioner was entitled to the exemption under the Act.

14. On the other hand, learned Sr. Central Government Standing Counsel Shri M.R. Bhatt appearing for the Union of India has submitted that the Gold Bond had peculiar characteristics. According to him, a sum of Rs. 2/- per 10 gms was to be paid to a holder of the Gold Bond every year. It was also open to the holder of the Gold Bond to assign the same to any other person. It has been submitted by him that these two important characteristics of the Gold Bond ceased to have effect after its date of maturity. In other words, it was not open to a bond holder to transfer or assign the bond to another person after 27.10.1980. Moreover, a return of Rs. 2 per 10 gms., which a bond-holder was getting, had also ceased with effect from 27.10.1980.

15. According to the learned Standing Counsel, the Gold Bond lost these two important characteristics with effect from 27.10.1980 and, therefore, the Gold Bond had lost its peculiar or typical characteristics after 27.10.80. As the bond lost these two important characteristics after 27.10.1980, it cannot be said that

the Gold Bond had retained the same characteristics and, therefore, no exemption can be granted under the Act in respect of the Gold Bond after 27.10.1980.

16. It has been submitted by him that the Government was ready and willing to fulfill its obligations of giving gold in exchange of the Gold Bond. According to him, it was for the assessee to do the necessary formalities for getting the gold back, but the assessee, with some oblique motive, did not get his gold back and retained the Gold Bond so that he can avail the exemption under the provisions of the Act even after 27.10.1980.

17. According to the learned Standing Counsel, the intention of the Government was never to give exemption in respect of the Gold Bond after the date of its maturity. Thus, it has been submitted by him that the Gold Bond had lost its important characteristics of assignability and getting return @ Rs. 2/- per 10 gms. after 27.10.1980 and, therefore, the Gold Bond could not have been treated as Gold Bond but, it should be treated as a piece of paper representing a right to get gold back from the Government and it should be treated at par with gold.

18. It has been, thus, submitted by him that after the date of maturity, the Gold Bond cannot attract exemption provided u/s 5(1)(xvia) of the Act.

19. We have heard the learned Counsel at length and have also considered the judgments cited by them. Upon hearing the learned advocates and perusal of the law laid down in the judgments referred to by the learned advocates, the following factual position emerges :

20. Section 5(1)(xvia) of the Act was enacted as under with effect from 13.12.1962 by Taxation Laws (Amendment) Act, 1962 :

"To exempt 6 1/2% Gold Bonds, 1977."

21. Subsequently, by the Finance (No. 2) Act, 1965, with effect from 1.4.1965, 7% Gold Bonds, 1980 were added in the said provision and thereafter under Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1965, with effect from 4.12.1965, National Defence Gold Bonds, 1980 were further included in the said clause. Thus, National Defence Gold Bonds, 1980, with which we are concerned, were exempted from payment of wealth tax with effect from 4.12.1965. The said exemption in respect of National

Defence Gold Bonds, 1980 was very much on the statute book for the period with which we are concerned.

22. Thus, it cannot be disputed that National Defence Gold Bonds, 1980 were exempted in respect of wealth tax for the Assessment Years 1981-82 to 1983-84.

23. In the instant case we are concerned with Assessment Years 1981-82 to 1983-84 when National Defence Gold Bonds, 1980 were exempted from wealth tax. Now, the question is whether the bond in question would cease to be National Defence Gold Bond after 27.10.1980, the date on which the said bond became mature for exchange.

24. According to learned Sr. Standing Counsel Shri M.R. Bhatt, after 27.10.80, the bond lost its two important characteristics, namely, assignability and annual return. After 27.10.1980, the bond did not remain assignable and the Government was not liable to pay a sum of Rs. 2 per 10 gms. p.a. to the holder of the Bond. Learned Sr. Standing Counsel has therefore submitted that if the two important characteristics of the Gold Bond had come to an end on 27.10.1980, the Gold Bond should be given different treatment thereafter. It means that the Gold Bond had lost its original characteristics and, therefore, the Gold Bond should not be treated in the sense in which they had been exempted under the provisions of the Act.

25. We are not in agreement with the submission made by the learned Sr. Standing Counsel. It is immaterial whether the Government had continued to give any return to the Gold Bond holders or whether the Gold Bond could have been assigned with or without any formality. In the matter of exemption it would not only be unjust and improper but it would be against the settled principles of statutory interpretation to deprive an assessee of the exemption, which he is entitled to. As stated hereinabove, we firmly believe that simply because of change in two minor characteristics of the Gold Bond, the Gold Bond would not lose its basic characteristic as it still remained a Gold Bond till the government fulfilled its obligation of giving gold in exchange thereof.

26. What is important is whether the Gold Bond remained Gold Bond in the hands of the assessee even after 27.10.1980. If its nomenclature has not been changed and if it remained as it was in the past, and if even the provision with regard to the exemption remained on the statute book till 31.3.1993, the question is whether the revenue can be permitted to say that the Gold

Bond had lost its important characteristics and, therefore, it did not remain National Defence Gold Bond, 1980 after its date of maturity. Simply because some of the characteristics had been changed, in our opinion, the basic characteristic of the Gold Bond would still remain.

27. Thus, we have to come to a conclusion that there was no change even after 27.10.1980 so far as the exemption in respect of the Gold Bond is concerned and the Gold Bond remained as it was even after its date of maturity and the exemption given to it in respect of payment of wealth tax continued. Looking to the fact that sec. 5(1)(xvia) continued to give exemption to the Gold Bond, one can believe that intention of the legislature was to give benefit to its holder in respect of payment of wealth tax. Had there been no such intention, there was no purpose in continuing the exemption in clause 5(1)(xvia) even after 27.10.1980. One cannot presume that the legislature did not know the fact that the Gold Bonds were to mature on 27.10.1980. It is also pertinent to note that while exempting the Gold Bonds in respect of payment of wealth tax under the Act, no provision was incorporated that the bonds would be subject to the exemption only till its date of maturity. Even after the date of maturity when the statute continued the provision with regard to the exemption, we believe that the intention of the legislature was to give exemption in respect of payment of wealth tax to the holders of the Gold Bond.

28. In the course of the arguments, learned Sr. Standing Counsel Shri Bhatt had argued that the provisions with regard to exemption under tax statute should be construed strictly. We are in agreement with the submission made by the learned advocate. One should however not forget the fact that first of all the law is to be interpreted as it is. If we interpret the law as it is, it is clear that the exemption given in respect of the Gold Bonds continued on the statute with effect from 24.12.65 till 31.3.1993. Thus, the legislature wanted to give exemption to the holder of the Gold Bonds in respect of the Gold Bonds till 31.3.1993. We are concerned with Assessment Years 1981-82 to 1983-84 and all these assessment years have been incorporated in the period during which the exemption was in force.

29. In the course of the arguments learned advocate Shri J.P. Shah had referred to some judgments and dictionaries to show meaning of the term "bond". He has made an effort to show that in the instant case the term "bond" would mean that the Government was bound to give

quantity of gold specified in the bond to the holder of the Gold Bond. According to him, till the said obligation on the part of the Government is fulfilled, the Government was bound by the said obligation and, therefore, it cannot be said that the bond was not having its basic characteristic.

30. In our opinion, till the obligation with regard to giving gold in exchange of the bond is not fulfilled by the Union of India, the Gold Bond would continue to remain Gold Bond even if the liability in respect of payment at the rate of Rs. 2/- for 10 gms. of gold comes to an end on a particular date. Simply because the government was not bound to pay the said amount, which was in the nature of interest to the bond-holder, it cannot be said that the bond had lost its basic characteristic. Even the assignability cannot be treated as a basic characteristic of the gold bond as submitted by Shri Bhatt for the revenue. What was important was fulfillment of the main obligation by the government. Till gold was given to the bond holder in exchange of the bond, the Gold Bond retained its important characteristic of a Gold Bond. It may incidentally be stated that the assignability and payment of Rs. 2/- p.a. for every 10 gms. of gold were only additional attractions for the purchase of the Gold Bond.

31. It is also pertinent to note that for the purpose of calculation of capital gains, by virtue of a notification dated 22.9.1980, issued by the government, it had been clarified that the market value of the Gold Bond on the date of its redemption was to be taken into account. It is worth noting that the value of the Gold Bond as on 27.10.1980 was not to be considered for the purpose of calculation of capital gains. This would impliedly mean that the Gold Bond continued to remain in the same form till the date of its redemption and not till the date of its maturity. If this is the position, in our opinion, the revenue is not justified in not considering the bond as Gold Bond for other purposes.

32. There is another important fact with regard to the exemption granted under the Act to the Gold Bond. Had the legislature thought of giving exemption in respect of the Gold Bond under the Act for a limited period, i.e., till the date of its maturity, in sec. 5(1)(xvia) the legislature would have mentioned the date till which the exemption in respect of the Gold Bond was to be granted or the legislature would have withdrawn the exemption by deleting the words "and National Defence Gold Bonds, 1980" from sec. 5(1)(xvia) with effect from

27.10.1980. There was nothing which prevented the legislature from deleting the aforestated words after the date when the Gold Bond had become mature for exchange of gold. If the legislature did not think it proper to withdraw the exemption given under sec. 5(1)(xvia), in our opinion, the revenue is not justified in not granting the exemption as claimed by the assessee.

33. Incidentally, the learned Sr. Standing Counsel for the revenue had also submitted that such an interpretation of the exemption clause would be discriminatory in nature. He had submitted that if one Mr. A gets his gold bond redeemed on 27.10.1980, he would not be entitled to any exemption in respect of the gold, which he received from the government on that day, whereas if Mr. B does not surrender the Gold Bond, and keeps it beyond the period of maturity, he would be exempted from paying tax in respect of the Gold Bond after 27.10.1980 and till the said Gold Bond is redeemed. He had submitted that such a position would give discriminatory treatment to the citizens and, therefore, such an interpretation should not be made. We are not in agreement with the submission made by the learned Sr. Standing Counsel for the reason that upon getting the Gold Bond exchanged, the concerned assessee would not be having the Gold Bond, but he would be having only gold, and there is no exemption in respect of gold under sec. 5(1)(xvia) of the Act. If a person decides not to retain the Gold Bond with him, he cannot expect something which he receives in lieu of the bond as exempted under the Act. In our opinion, the said argument is not sound for the reason that it was also open to a holder of the Gold Bond to assign the gold bond for consideration even before the date of maturity, i.e., 27.10.1980. If Mr. A transfers or assigns his gold bond to someone for consideration received in cash before 27.10.1980 or in 1975, he cannot claim that the amount of cash received by him would be subject to exemption because that amount was received in exchange of the Gold Bond. So as to have exemption under the Act, it was obligatory on the part of the assessee to have the Gold Bond in the same form. Thus, the argument that interpretation put forward by the assessee, if accepted, would be absurd, is not tenable and, therefore, is not accepted by us.

34. Finally, we may refer to one litmus test, which would be as under - whether the Gold Bond remained a Gold Bond after 27.10.1980, if it had not been exchanged for gold? The clear-cut answer would be 'yes'. Even if not exchanged for gold after 27.10.1980, it would still remain a Gold Bond because in that event the government

still would be liable to fulfil its promise of giving gold in exchange of the Gold Bond as promised to the citizens in 1965.

35. In the course of arguments, some judgments have been referred to by the learned advocates, which do not pertain to the sub-clause with which we are concerned but they pertain to meaning of the term 'Bond' etc. and, therefore, we do not think it necessary to discuss the same.

36. For the aforesaid reasons, we are of the view that the Tribunal was in error in considering that the Gold Bond had not retained its original characteristics and was not eligible for exemption under the provisions of the Act for the A.Y. 1981-82 to 1983-84. In our opinion, even after the date of maturity, for the assessment years under consideration, the assessee was entitled to the exemption and, therefore, we answer the question in the affirmative, i.e., in favour of the assessee and against the revenue.

The reference thus stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(K.M. Mehta, J.)
(hn)

(PER: MR.JUSTICE K.M.MEHTA)

1. I have gone through the judgment prepared by My learned Brother Justice A.R.Dave. I fully agree with the reasonings given by my learned brother. In fact I have also signed the said judgment. However, looking to the importance of the matter, I am expressing my opinion by a separate judgment, also.

2. The Income-Tax Tribunal at the instance of Assessee has referred following question of law for opinion under Section 27 of the Wealth Tax Act, 1957 (hereinafter referred to as `the Act').

"Whether, on the facts and in the circumstances of the case, the assessee was entitled to the exemption under Sec.5(1)(xvia) in respect of the National Defence Gold Bonds, 1980"?

3. The facts giving rise to this reference are as

under:

Background of the matter:

3.1 The Government of India had issued National Defence Gold Bonds, 1965, which was followed upto 31st January, 1966, in exchange of gold, gold coins or gold ornaments. The said scheme was popularly known as "National Defence Gold Bonds 1980". As per the said scheme, all the gold received will be returned after 15 years. The background of the issuance of the said bond which was stated by the Government as under:

The Country Needs Your Gold:

3.2 Never before has our country needed gold so much. We are strengthening our defences against possible aggression. We need arms and armaments and the machines that makes these, so that we may be self-reliant in our defence preparations. We needed machinery and raw materials for the industries that support our defence effort. All these can be had if we have enough gold. Gold in your hands is idle; gold in the hands of the Government means valuable, much needed foreign exchange. Most of our immediate requirements of foreign exchange can be met only if you and other patriotic citizens place your gold in trust with the Government. Recent experiences have taught us that we cannot depend on others. In any case, dependence on outside help will only make us weaker. To be strong, we must learn to rely on ourselves.

3.3 Fortunately, we have plenty of gold in our country to tide over the crisis. Most of us have gold ornaments or gold coins. The country needs then now. Exchange them from Gold Bonds before January 31, 1966. Our freedom and our future, and even the safety of our lives and of those we love, depend on how much gold is handed over to the Government now.

3.4 The Government gives the solemn promise that the gold will be returned to you after 15 years in standard purity (23.88 carats or .995 fineness). If you have subscribed to Gold Bonds in the form of ornaments, gold returned to you after 15 years can be reconverted into ornaments of any purity.

3.5 After that the Government had issued the procedure for obtaining Gold Bonds.

3.6 Pursuant to the aforesaid scheme, the Government of India, Ministry of Finance (Department of Economic

Affairs), New Delhi issued a notification dated 19th October, 1965, which reads as under:

"No.F.4(29)-W & M/65:- Subscriptions for the issue of National Defence Gold Bonds, 1980, will be received without limit of amount from the 27th of October 1965 to the 31st of January 1966, both days inclusive, but the Government of India reserve the right to close the issue earlier without notice. Subscriptions will be in the form of gold, gold coins and/or gold ornaments. The date of issue of the Bonds will be the date on which the gold is tendered at the receiving office.

3.7 Similarly, National Defence Gold Bonds, 1980 scheme was issued and in that the procedure for filling the application was enacted. It was also stated that no questions will be asked on how you acquired the gold, No action will be taken under the Gold Control or Customs Regulations. The sealed cover containing your gold will be sent to the Government Mint, where experts will melt and refine it to 23.88 carats purity with the aid of high-precision instruments. They will then notify the Reserve Bank and the Bank which accepted your gold about the weight of the refined metal. The Bank which accepted your gold will then issue a Gold Bond to you, in the form of a Government Promissory Note or a Stock Certificate (according to your choice). A receipt from the Reserve Bank on the weight of the refined gold will also be given to you. In the case of gold ornaments the bank will give you Rs.3 per 10 grammes of refined gold (one tola is equal to 11.66 grammes) as compensation for making charges. This is given to you at the time the Gold Bond is issued. The Government will give you Rs.2 per 10 grammes of - refined gold per annum, (a weight of 8 grammes). This amount falls due on the 27th October every year.

3.8 It was stated that the earnings from the Gold Bond will be exempt from income tax. Gold Bonds will not attract wealth-tax. Profits made from the sale of a Gold Bond will not be subject to income-tax.

3.9 It may be noted that in the Income-tax Act, 1961, the definition under sec.2(14) "capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include -

"(iv) 6 1/2 per cent Gold Bonds, 1977, or 7 per cent Gold Bonds, 1980, or National Defence Gold

Bonds, 1980, issued by the Central Government."

3.10 The learned counsel has also invited my attention to sec.193 of the Income-Tax Act which provides as under:

"sec.193 Interest on securities :- The person responsible for paying any income by way of interest on securities shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or by any other mode, whichever is earlier, deduct income-tax ** at the rates in force on the amount of the interest payable."

3.11 Sub-sec.(iii) of Sec.193 of the Income Tax Act provides as under:

" any interest payable on 6 1/2 per cent Gold Bonds, 1977, or 7 per cent Gold Bonds, 1980, where the Bonds are held by an individual not being a non-resident, and the holder thereof makes a declaration in writing before the person responsible for paying the interest that the total nominal value of the 6 1/2 per cent Gold Bonds, 1977, or, as the case may be, the 7 per cent Gold Bonds, 1980, held by him (including such bonds, if any, held on his behalf by any other person) did not in either case exceed ten thousand rupees at any time during the period to which the interest relates;"

3.12 In view of the aforesaid provisions of Income-tax Act, it appears that gold bond is exempted from capital gain, interest on security and also interest payable on the gold bond, all are exempted under the payment of income-tax.

3.13 As regards provisions of Wealth Tax, the Legislature had enacted Sec.5 of the Wealth Tax which provides as under:

"Sec.5 Exemptions in respect of certain assets:(1) [Subject to the provisions of sub-section (1A), wealth-tax shall not be payable by an assessee in respect of the following assets], and such assets shall not be included in the net wealth of the assessee."

"(xvia) 6 1/2 per cent Gold Bonds, 1977, [7 per cent Gold Bonds, 1980], [and National Defence Gold Bonds, 1980]"

{ Inserted by the Finance (No.2) Act, 1965, w.e.f. 1.4.1965 }

3.14 In view of the same, the gold bond is also exempted from the payment of Wealth Tax. It may be stated that the gold bod was also exempted from payment of gift tax and estate duty.

PRESENT CONTROVERSY:

4. It appears that one Shri Shankarlal Gafurbhai Patel of Cambay (hereinafter referred to as "assessee") had deposited gold and in lieu thereof he received Gold Bond in this behalf. After 27.10.80 he did not surrender the Gold Bond to the Government. In the case of assessment for the A.Y. 1981-82 was completed on 19.3.83 accepting net wealth at Rs.2,96,604/- under sub-section (1) of section 16 of the Wealth Tax Act.

4.1 Subsequently a notice under sec.17(1) of the Wealth Tax Act was issued and served on 29.3.84 as the assessee had included the value of National Defence Gold Bond 1980, grams 1639 value of which comes to Rs.2,62,240/-. In response to the said notice the assessee has furnished a return of net wealth on 27.3.84 showing net wealth at Rs.2,96,604/- stating in Part IV of the said return as under:

"Gold Bold is not converted into gold before the end of the year".

"National Defence Gold Bond 1980 grams - 1639".

4.1(A) It was also mentioned in the statement of computation of net wealth accompanied to the return of wealth that :-

"the said National Defence Gold Bond is exempted under sec.5 and hence it is not included in the total wealth."

4.2 In view of the aforesaid aspect, the Wealth Tax Officer - Ward-B Petlad, called the assessee for personal hearing. The assessing officer relied upon the Press note dated 22.9.80 issued by the Government of India in connection with the possession of National Defence Gold Bonds, 1980. Accordingly the bond holder though they had not surrendered would have to include the value of the gold to be exchanged against bonds after 26th October 1980 in the total wealth. In view of the above foregoing the value of the gold to be obtained against National Defence Gold Bonds 1980 grammes 1639 and computed the liability of total wealth under the Wealth Tax Act. The said assessment order was passed for the A.Y.1981-82 and

the order was passed on 2.3.85.

4.3 It may be noted that identically for the A.Y.1982-83 also the Wealth Tax Officer passed the order and for the A.Y.1983-84 also. The Wealth Tax Officer passed the order and included the value of National Defence Gold Bonds, 1980, which was not encashed by the assessee. So there were three different orders passed by the Wealth Tax Officer for three different Assessment Years.

4.4 Being aggrieved and dissatisfied with the said orders, the assessee filed three appeals namely for the years 1981-82, 1982-83 and 1983-84 before the Appellate Assistant Commissioner of Income Tax at Baroda.

4.5 The Appellate Asstt.Commissioner of Wealth Tax, Baroda, by its order dated 30.7.87 pleased to dismiss the appeals of the assessee and confirmed the order of the Wealth Tax Officer and held that the Wealth Tax Officer was justified in adding the value of gold to be exchanged by the appellant against National Defence Gold Bonds, 1980.

4.6 Being aggrieved and dissatisfied with the said order of the Appellate Commissioner, the assessee filed appeals being W.T.A.Nos.825 to 828/Ahd/1987 before the Income Tax Appellate Tribunal at Ahmedabad Bench 'C'.

4.7 The Income Tax Appellate Tribunal after considering the provisions of law and judgments of other tribunals pleased to dismiss the appeals of the assessee by judgment and order dated 1.12.1989.

4.8 Thereafter the assessee filed application for reference before the tribunal and the tribunal by its order dated 31.8.1990 pleased to refer the aforesaid question of law for opinion. In view of the same, that is how the matter has come up for hearing before this Court.

5. Mr.J.P.Shah, learned counsel for the assessee has invited my attention to the provisions of the scheme by which the Gold Bonds issued in 1980, the notification of 19th October, 1965, provisions of Wealth Tax Act and Income Tax Act in this behalf.

5.1 For assailing the order of the tribunal, the learned counsel for the assessee has made following submissions:

5.2 The learned counsel has invited my attention to the definition of bond in the dictionary which defines "bond" means an obligation; a promise. A written promise to pay money or do some act if certain circumstances occur or a certain time elapses; a promise that is defeasible upon a condition subsequent.

5.3 According to him, the simple meaning of bond is to promise to repay and as long as actual return of gold does not happen, promise or bond is very much in existence. Only way bond can come to an end is by repayment of gold, which is the promise given by the document called "gold bond". Promise can come to end by fulfilling it. Till then promise is in existence. Promissory note fixed duration is in existence till promise to repay is fulfilled.

(1) Notification dated 19th October, 1965, states in para 5 "Bond will be exempt from wealth tax". It does not state upto 27.10.80.

(2) 27.10.80 is the date from which it is available for redemption; not that bond stands redeemed on that date. Redemption of bond is only on the day on which gold is returned to the assessee in exchange of gold bond.

5.4 The learned counsel has invited my attention to the communication dated 22nd September, 1980, issued by Ministry of Finance, Department of Economic Affairs, New Delhi title Press Communique, National Defence gold Bonds, 1980, particularly para 9 of the said communication which reads as under:

> "No capital gains will arise when the Bonds are exchanged for gold on redemption. However, any subsequent sale, exchange or transfer of such gold within the meaning of section 2(47) of the Income Tax Act would attract capital gains tax in respect of capital gains arising from such sale exchange or transfer. For the purpose of computation of capital gains, the cost of acquisition of gold would be the market value of the Bonds on the date of redemption."

5.5 In view of the same learned counsel submitted that it is absolutely clear that whenever redeemed by return of gold, what is redeemed is gold bond only and no other instrument. He has also invited my attention to the Circular No.415 dated 14th March, 1985, para 1 of the said circular provides "these bonds were redeemable after

15 years i.e. on or after October 27, 1980."

5.6 The learned counsel therefore submitted that after 27th October, 1980, bonds remains bond and the contention of the revenue that bond is not in existence after 1980 is incorrect statement made on the basis of the said circular. He further submitted that promise to return the gold is the essence of the bond and Rupees 2/per tola of gold per year not being payable after 27th October, 1980, does not make it any the less a gold bond.

5.7 The learned counsel has further referred to the said circular and stated that no capital gains will arise when the bonds are exchanged for gold on redemption. However, any subsequent sale, exchange or transfer of such gold within the meaning of section 2(47) of the Income-tax Act would attract capital gains tax in respect of capital gain arising from such sale, exchange or transfer. For that the purpose of computation of capital gains, the cost of acquisition of gold would be the market value of the bonds on the date of redemption.

5.8 The learned counsel submitted that as per sec.5(1)(xvia) of the Wealth Tax Act, 7% Gold Bonds, 1980 are also entitled to exemption w.e.f. 1.4.1965. The National Defence Gold Bonds, 1980, were included for the purposes of exemption w.e.f. 19.10.1965. He submitted that even after 27th October, 1980, the gold bonds were continued to be exempted from wealth tax and for that purpose he has invited my attention to Mr.Mehta, Ready Reckoner, pages 203, 204 & 206 for the A.Y. 1982-83, 1983-84 & 1984-85. All these provides that 7% of Gold Bonds, 1980 and National Defence Gold Bonds, 1980, were continued to be exempted from payment of Wealth Tax without any monetary limit.

5.9 The learned counsel further stated that as per the said provisions annual payment received on these bonds are exempt from income-tax under section (10)15)(ia) of the Income Tax Act. He has referred to definition of capital asset contained in sec.2(14) of the Income Tax Act. He stated that the said definition expressly excludes stock-in-trade, personal effects, some agricultural lands in India, Gold Bonds and Special Bearer Bonds.

5.10 The learned counsel has also invited my attention to press release of Times of India dated 5.2.2000 which provides "The National Defence Gold Bonds, 1980 can be tendered for repayment of gold at the Public Debt Offices of the Reserve Bank of India at Ahmedabad, Bangalore,

Mumbai, Calcutta, Hyderabad, Jaipur, Kanpur, Chennai, Nagpur, New Delhi and Patna, said an RBI press release. The release further said that holders of the bonds may approach the above offices of RBI to obtain the delivery order in exchange of the discharged bonds. Gold can be collected by the holders of the bonds themselves or through their authorised representatives. Holders can also collect their gold upto the market value of Rs.20,000/- by registered and insured post subject to prescribed conditions.

5.11 The learned counsel has further invited my attention to press release Gold Bonds Scheme 1993 Repayment issued from PIB Press Release, New Delhi, dated 1.8.2001. The said press release provides that the bonds issued under the Gold Bonds Scheme, 1993, are being repaid in gold from March 14, 1998, at offices of the Reserve Bank of India and designated branches of State Bank of India.

5.12 The learned counsel has also relied on the decision of the Hon'ble Supreme Court in the case of Anarkali Sarabhai vs. Commissioner of Income-Tax reported in 224 ITR 422, on page 430 the Hon'ble Supreme Court observed as under:

> "... We are of the view that the High Court has come to the right decision in this case. The redemption of preference shares in the facts of this case will squarely come within the meaning of the phrase "sale, exchange or relinquishment of the asset".

5.13 The learned counsel has also relied on the judgment of Calcutta High Court in the case of Commissioner of Income-Tax vs. East India Charitable Trust reported in 206 ITR 152 particularly on page 164 the court observed as under:

> "The Wealth-tax Act defines "asset" in a similar vein as the Income-tax Act defines "capital assets". The assets both for Wealth-tax and the Income-tax Acts, barring the specified exclusions, include property of every description, movable or immovable. The Wealth-tax Act has also an exclusionary part, but the exclusions stated therein like the exclusions in the definition of capital assets do not touch any investments or deposits. On the other hand, the investments and deposits are, in the first instance, brought within the initial charge of

wealth-tax and, afterwards, by special provisions, namely, section 5, excludes from the charge of tax certain deposits and investments as enumerated in that section. References may be made in this connection to clauses (xv), (xvi), (xxva), (xxvb), (xxvi), (xxvii), (xxviia), (xxviib), (xxviic), (xxviid), (xxixxx) of section 5(1) of the Wealth-tax Act. Thus, it is clear that whatever comes within the definition of assets under the Wealth-tax Act in its section 2(e) should likewise come under the definition of capital assets unless specifically excluded. The fixed deposit either with banks or with a public sector company is not an excluded asset under either of the two definitions, viz., the definition of "capital assets" under section 2(14) of the Income-tax Act, 1961, and "assets under section 2(e) of the Wealth-tax Act, 1957."

5.14 The learned counsel has also relied on the decision of the Calcutta High Court in the case of Commissioner of Income Tax vs. Hindustan Welfare Trusts reported in 111 CTR 284, particularly para 16 the court observed like this:

"Depositing money with bank by way of fixed deposit or giving a loan cannot be equated with hiring out a car as contended on behalf of the Revenue. When a car is hired out, the ownership of the car remains with the owner of the vehicle and the hirer has merely the right to use whereas when money is lent or deposited in fixed deposit with the bank, the ownership in the money passes on to the bank or to the debtor who is free to use it in any manner he chooses. In the case of hiring out of the case it is a contract or bailment whereas the bank deposit is a case of a debt."

5.15 The learned counsel for the petitioner has also invited my attention to the decision of this Court in the case of Commissioner of Income Tax, Gujarat II vs. Elecon Engineering Co.Ltd reported in 104 ITR 510 particularly on page 519 where the Court has observed that there would be nothing which is superfluous or redundant in an Act or a provision of an Act placed on the statute book by the legislature.

5.16 The learned counsel has also invited my attention to the decision of Madras High Court in the case of M.Venkatesan v. Commissioner of Income Tax, Tamil Nadu-V

reported in 144 ITR 886. On page 888 the Court observed like this:

"Section 45 of the I.T.Act enacts that tax under the head "Capital gains" shall be payable on any profit or gain arising from the transfer of a capital asset. Under this charging section, he crucial requirements are that there must be a transfer and the transfer must be of a capital asset. The implication is that at the time of the transfer the subject of the transfer must be a capital asset. There is no further implication."

5.17 The learned counsel has invited my attention to the judgment of the Income-tax tribunal of Nagpur Bench in the case of Inspecting Assistant Commissioner v. Mrs.Sakina reported in Vol.27 Income-tax Tribunal Decisions p.370 particularly on page 374 the tribunal has observed like this:

"In any case, on the valuation date the asset in the possession of the assessee was National Defence Gold Bonds. Its possession was legally sanctioned and recognised in view of the extension granted for encashment of such bonds up to 31.3.1982. They continued to enjoy exemption under section 5(1)(xvia) of the Wealth Tax Act. As long as they were held as gold bonds and as long as the exemption available to such bonds was not withdrawn after October, 1980, such exemption had to be conferred on the assessee. The assessees were free not to encash or insist on the repayment of the gold bonds and were required to declare the value of the gold only after it received repayment in the form of gold on encashment of the bonds for which it had to follow certain set procedure."

"para.6 We are, therefore, satisfied that the CWT(A) was fully justified in granting exemption under section 5(1)(xvia) of the Act. We would not, therefore, interfere with the orders of the CWT(A) which are confirmed and the departmental appeals are dismissed."

6. On behalf of revenue Mr.Manish Bhatt, learned advocate has made following submissions:

(1) The Government was in need of gold to back up its resources to meet with certain

contingencies for a specified period. Gold was, therefore, required for a period of 15 years. The gold so acquisitioned was locked up from 31.1.1966 to 27.10.1980. Thus, it can be said that exemption was granted in respect of gold belonging to the assessee, which was locked with the government for 15 years.

(2) Life of the bond is 15 years. The promise ends on 27.10.1980 when the government has kept gold ready for delivery. The appropriate quantity of the gold was also earmarked for this purpose. The obligation of the government ends on 27.10.1980 when the government offers to deliver the gold. The Government thereafter only acts as an agent/custodian of the assessee with regard to the gold.

(3) In the exemption provisions i.e. section 5(1)(xvia) there is a deliberate mention of "6 1/2%, 7%. On the date of maturity like the National Defence Gold Bond, 1980, these bonds would cease to carry interest. Further, their assignability also ceases on the maturity date. Thus, for all effect and purposes, they cease to be "bonds" and are transformed as a receipt for collection of gold.

6.1 The learned counsel for the revenue further submitted that, if the argument of the assessee is accepted, it may lead to serious absurd results. For one assessee, exemption will cease in 1980, for another it may be available for years thereafter that e.g. upto the year 2000, that too in respect of the same gold bonds. Such a situation will also have direct bearing on the like exempting security e.g. 5(xv), 5(xvi), 5(xvib), 5(xvid), 5(xvie), 5(xxiv), 5(xxva), 5(xxvb) etc. In such cases, even after the maturity date or the date for redemption, as the case may be, if the assessee does not collect the money though so offered and kept ready, he may claim exemption, which is not the intent and purpose of section 5.

6.2 Learned counsel for the revenue further submitted that the submission of the assessee is also not tenable in law e.g. a debenture matures or is to be redeemed on a particular day. Subsequent thereto in the books of account of the assessee, it would be stated "Debenture Redemption Receivable Account", in the event the assessee has not received the amount under the debenture. The

assessee cannot show the said amount under the head "Debenture Account".

6.3 The learned counsel for the respondent has relied upon the judgment of ITAT Bombay Bench in the case of Executors & Trustees of the Estate of Late Shri R.G.Saraiya Vs. Second Wealth-tax Officer reported in Vol.24 Income-tax Tribunal Decisions p.211. The tribunal in para 4 on page 213 has held as under:

> "para.4 It could be seen that the contentions of the two sides are: (a) on behalf of the assessee that the document in his hands was the gold bond, and (b) on behalf of the Revenue, that it is gold or as good as gold.
>
> In our view, it is neither. We have to state the real nature of this document on the maturity date. Now, when the gold bond is issued to a person, there is an agreement between him and the Govt. that the gold will be returned on a certain future date called the maturity date; and during that time, the assessee has the right to interest and he can also assign the bond. Under the terms of the bond, the holder has a right to get back the gold on the maturity date whereupon the interest would cease and it would no longer be assigned. Therefore, on the maturity date, the character of this document which was the bond would change. It would not bear interest and it would lose assignability. Although it may be called a bond, actually it is no longer a bond. On the maturity date, it is merely a document of title to the gold. Its presentation to the Reserve Bank would entitle the holder of that document to the delivery of the gold."

7. I have considered the submissions of the learned advocate for the assessee and the revenue and the various judgments which has been cited in this behalf. I have also considered the definition of gold bond, notification, circular and other aspects in this behalf. I have also considered the provisions of Income Tax Act, Wealth Tax Act, press release, communication relating to gold bond and the various judgments cited by both the sides in this behalf.

8. In my view the gold bond which is available on 27.10.80 and which is not redeemed is a bond till it is redeemed. The simple meaning of bond is promise to repay and as long as actual return of gold does not happen, promise or bond is very much in existence. Only way bond

can come to an end is by repayment of gold, which is the promise given by the document called "gold bond". Promise can come to end by fulfilling it. Till then promise is in existence. Promissory note fixed duration is in existence till promise to repay is fulfilled.

9. In my view the gold bonds on the valuation date the asset in the possession of the assessee was National Defence Gold Bonds. Its possession was legally sanctioned and recognised in view of the extension granted for encashment of such bonds upto 31.3.82. They continued to enjoy exemption under section 5(1)(xvia) of the Wealth Tax Act. As long as they were held as gold bonds and as long as the exemption available to such bonds was not withdrawn after October 1980, such exemption had to be conferred on the assessee. The assessees were free not to encash or insist on the repayment of the gold bonds and were required to declare the value of the gold only after it received repayment in the form of gold on encashment of the bonds for which it had to follow certain set procedure.

10. In my view the following passage from American Jurisprudence, 2nd Edition, Volume 10, page 301 para 339 also succinctly set out the issue involved in this case.

> "339. Relation between general depositor and bank. :"Although money on deposit in a bank is commonly considered to the property of the depositor, the relationship in fact between him and the bank is that of debtor and creditor, the amount on deposit represents merely an indebtedness by the bank to the depositor. It is therefore a fundamental rule of banking law that in the case of a general deposit of money in a bank, the moment the money is deposited it actually becomes the property of the bank and the bank and the depositor assume the legal relation of debtor and creditor. The legal effect of the transaction is that of a loan to the bank upon the promise and obligation, usually implied by law, to pay or repay the amount deposited, usually upon demand, there is nothing of a trust or fiduciary nature in the transaction, nor anything in the nature of a bailment in the transaction or relationship or in the nature of any right to the specific moneys deposited. Rather, the funds thus received are commingled with other funds of the bank and may be loaned or otherwise deposed of by the bank, indeed if the funds are lost, destroyed, or stolen, or become

worthless the loss must be borne by the bank, even though it is free from negligence or fault."

"340. Depositor in savings bank or savings department:-

"The relationship of a depositor in a saving bank account or a depositor having a savings account, to the bank is dependent upon the nature of the bank's business or corporate make-up and upon the way and for whose ultimate benefit the business of the bank is conducted. If the deposit is in a savings bank which has a capital stock and stock-holders the relationship is practically the same as that existing between the depositor of a commercial account and the bank which carries the account, viz., that of debtor and creditor. However, where a savings bank is conducted solely for the benefit of the depositor the deposits constituting its only capital, and the income from interest, etc., after deducting expenses, is divided among the depositors, the relationship between them and the bank is not that of the ordinary debtor and creditor but is more merely that of trustee and ceatui que trust or quasi-stock-holder and corporation."

11. I have considered all the judgments of the tribunal including the judgment of the tribunal of Nagpur Bench which is in favour of the assessee where the tribunal has given the correct reasons in this behalf. It is no doubt true that the Bombay Bench has decided in favour of the department. I have gone through the reasonings of the said decision also. In my view the reasonings of the tribunal that on the maturity date, the character of this document which was the bond would change is not correct. It is no doubt true that it will not yield any interest future, however still in the eye of law it remains a bond, it is like fixed deposit receipt where the fixed deposit receipt is already matured. Still in the eye of law it remains a fixed deposit receipt though the bank or other institution may not give interest on the said amount and therefore to that extent the Bombay Bench view is not correct in that behalf, therefore, to that extent I agree with the views expressed by the Nagpur Bench. I have considered the definition of bond which has been cited by Mr.Shah. I have also considered the notification dated 19th October, 1965, and also the communication dated 22nd September, 1980, issued by Ministry of Finance, Department of Economic Affairs, New Delhi. I have also considered the

circular and provisions of Income Tax and Wealth Tax Act which I have referred earlier in this behalf. I have also considered the judgment of Calcutta High Court in the case of Commissioner of Income Tax Vs. East India Charitable Trust (supra) and another judgment of the Calcutta High Court in the case of Commissioner of Income Tax Vs. Hindustan Welfare Trusts (supra). I have also considered the judgment of Madras High Court in the case of M.Venkatesan Vs. Commissioner of Income Tax (supra). I have also considered the passage of American Jurisprudence, Second Edition Vol.10 which provides relation between general depositor and bank.

12. In view of the same, I hold that the Wealth Tax Officer, Assessing Officer and the Tribunal were not right in this behalf and in my view the assessee in this case have by their mere act of not surrendering the gold bonds claimed the exemption. The simple plain and obvious fact is that the State granted exemption in return for the right to retain the gold and when that right was given up in favour of the bond holder it withdraws their right to exemption. In view of the same I answer that assessee was entitled to the exemption under Section 5(1)(xvia) in respect of the National Defence Gold Bonds, 1980 in affirmative i.e. in favour of the assessee and against the revenue.

(K.M. Mehta, J.)

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